HON'BLE SMT. JUSTICE T. MEENA KUMARI
AND
THE HON'BLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No. 21841 of 2007

Date 12-10-2007

Between:
The Government of Andhra Pradesh,

.....

PETITIONER
AND

S.P. Khasim

.....RESPONDENT

THE HON'BLE SMT. JUSTICE T. MEENA KUMARI
AND
THE HON'BLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No.21841 of 2007

ORDER: (per Smt. T.Meena Kumari,J)

The Department filed the present writ petition seeking a writ of Certiorari to call for the records relating to and connected with the order dated 27.6.2007 in O.A. No.79 of 2007 on the file of the A.P. Administrative Tribunal, Hyderabad and to set aside the same by holding it as erroneous and contrary to law.

The brief facts of the case are that the respondent herein was placed under suspension for the alleged misconduct of misappropriation of Rs. 1,76,770/-. A case in Crime No.189 of 1997 was also registered against him for the offences under Sections 457,380 and 409 of I.P.C. The respondent was found guilty of the offence under Section 409 of I.P.C. and accordingly he was sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 3,000/-. Consequently, he was dismissed from service through proceedings dated 3.3.2002. Aggrieved by the said order of conviction, respondent preferred criminal Appeal before the Sessions Court. Initially, the learned Sessions Judge, passed orders suspending the sentence of imprisonment. Pursuant to the same, the D.I.G., Guntur through proceedings dated 17.8.2002, reinstated him. However, in the meanwhile, when the matter was reviewed by the Inspector General of Police, Guntur, he found that the respondent was wrongly reinstated into service. Again the respondent was dismissed from

service. Thereafter, the learned Sessions Judge, allowed the appeal filed by the respondent and acquitted him of the charges levelled against him. Subsequently, the respondent made a representation to the authorities to reinstate him into service. When the department did not reinstate him into service, he filed O.A. No.79 of 2007, impugned in the present writ petition, before the Tribunal. The Tribunal allowed the said O.A. and directed the department to reinstate the respondent into service within a period of one week and to pay him all the back wages. It further directed the department to pass necessary orders treating the period of dismissal in accordance with FR 54-B within a period eight weeks from the date of receipt of the said order notwithstanding pendency of the file before the Vigilance Commissioner. Aggrieved the department filed the present writ petition.

Learned Government Pleader for Services-II would contend that the oral enquiry initiated against the respondent is still pending and even the appeal against the order of acquittal filed by the C.I.D. is pending before this Court. In those circumstances, the Tribunal ought not to have ordered for reinstatement of the respondent and payment of back wages. He, therefore, prayed that the writ petition be allowed and the impugned order be set aside.

Learned counsel for the respondent on the other hand supported the impugned order and prayed that the writ petition be dismissed.

Before the Tribunal the department filed counter contending that a Criminal Appeal preferred against the order of acquittal is pending before this Court. They further stated that the matter was referred to the Government and Vigilance Commission for advice.

Admittedly, when conviction imposed against a delinquent has been set aside, he had to be naturally reinstated into service. The Tribunal having perused Rule 25 of the A.P.C.S. (C.C.& A)) Rules, held that the disciplinary authority may consider the circumstances of the case and make such orders as it deems fit, irrespective of Rules 20 to 24, where a penalty is imposed on a Government servant on the ground of misconduct, which led to his conviction. It further held that a penalty can be imposed

on a Government servant without conducting an enquiry especially when he was convicted by a Criminal Court on the charge of such misconduct. When the very basis for such an order is conviction by a Criminal Court and when the very conviction itself is set aside by the Criminal Court, naturally, the procedure contemplated for taking action under Rule 25 ceases to be in existence. In other words, when the Government servant is dismissed from service or any other penalty is imposed against him for such mis-conduct, without conducting any enquiry on the ground of conviction by a Criminal Court and when the Criminal Court has set aside the conviction, the penalty imposed against him automatically ceases to exist.

In support of this proposition, the Tribunal also relied upon a decision of the Supreme Court in DEPUTY DIRECTOR OF COLLEGIATE EDUCATION (ADMINISTRATION) MADRAS v. NAGOOR MEERA & OTHERS([1]).

In the said decision, the Supreme Court after considering the question of imposing a penalty under Article 311 on being convicted by a Criminal Court, without conducting an enquiry on the same mis-conduct in para-9 of the said judgment observed thus:

> "9. The Tribunal seems to be of the opinion that until the appeal against the conviction is disposed of, action under clause (a) of the second proviso to Article 311(2) is not permissible. We see no basis or justification for the said view. The more appropriate course in all such cases is to take action under clause(a) of the second proviso to Article 311(2) once a government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be. If, however, the government servant-accused is acquitted on appeal or other proceeding, the order can always be revised and if the Government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to had he continued in service. The other course suggested, viz; to wait till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in service a person who has been convicted of a serious offence by a criminal court. It should be remembered that the action under clause (a) of the second proviso to Article 311(2) will be taken only where the conduct which has led to his conviction is such that he deserves any of the three major punishments mentioned in Article 311(2). As held by this Court in Shankar Dass v. Union of India (SCC Page 363 para-

7).

The Tribunal while relying on the said decision of the Supreme Court held that the department is bound to reinstate the respondent into service and pay the back wages as if he was not dismissed from service.

It is also relevant to extract here Rule 54 of the A.P. Fundamental Rules & Subsidiary Rules.

"F. R. 54.

(1) When a Government servant, who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review or would have been so reinstated but for his retirement on superannuation (while under suspension or not), the authority competent to order reinstatement shall consider and make a specific order.

(a) regarding the pay and allowances to be paid to the Government servant of the period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and

(b) Whether or not the said period shall be treated as a period spent on duty

(2) Where the authority competent to order reinstatement is of the opinion that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the Government servant shall, subject to the provisions of sub-rule (6), be paid the full pay and allowances, to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirements, as the case may be;

Provided that where such authority is of opinion that termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing that the Government servant shall, subject to the provisions of sub-rule (7), be paid for the period of such delay, only such amount not being the whole of such pay and allowances as it may determine.

(3) In a case falling under sub-rule (2) the period of absence from duty including the period suspension, preceding dismissal, removal or compulsory retirement, as the case may be shall be treated as a period spent on duty for all purposes.

Xxxx xxxx xxxx"

Admittedly, as per sub-Rule 3 of Rule 54 also, the period of absence from duty including the period of suspension, preceding dismissal, removal or compulsory retirement has to be treated as the

period spent on duty for all purposes.

Taking into consideration the peculiar facts of the case and Rule 54 of the A.P. Fundamental & Subsidiary Rules, we are of the opinion that the Tribunal has rightly ordered for reinstatement of the respondent while allowing the O.A. In the circumstances, we do not find any illegality or irregularity in the order of the Tribunal warranting interference.

The writ petition fails and is accordingly dismissed. No costs.

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(T. MEENA KUMARI,J)

Date: 12th October, 2007

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(G. CHANDRAIAH,J)

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[1] (1995) 3 SCC 377